

U.S. Patent Application No. 10/611,414
Amendment and Reply dated November 25, 2008
In Response to Office Action dated October 14, 2008

REMARKS

Continued examination and favorable reconsideration are respectfully requested.

Claims 1-15, 17, 19-21, and 84-90 are pending in this application. Claims 16, 18, and 22-83 were previously canceled without prejudice or disclaimer. By this Amendment, claim 1 has been amended and claims 86-90 are added. Support for the amendments to claim 1 and new claims 86-90 can be found throughout the application, for example, at least in paragraphs [0103]-[0105] of corresponding U.S. Patent Application Publication No. US 2004/0126782 A1. No new matter has been added.

Applicants gratefully appreciate the courtesies extended by Examiner Sims to Applicants' representatives during the telephone conference of October 29, 2008. During the telephone conference, the recent rejection under 35 U.S.C. § 101 was discussed. Applicants also gratefully appreciate the courtesies extended by Supervisory Examiner Moran during the telephone conference of November 14, 2008, and for the indication that the amendments shown above to claim 1 would overcome the rejection under 35 U.S.C. § 101.

Rejection of the Claims under 35 U.S.C. § 101

At page 2 of the Office Action, claims 1-15, 17, 19-21, 84, and 85 are rejected under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. For the reasons set forth herein, Applicants respectfully traverse this rejection.

The requirements of 35 U.S.C. § 101 have been clarified in the recent decision *In re Bilski* (Fed. Cir. 2008). Claim 1 fully meets the requirements as defined by the Court in *Bilski*. Claim 1 recites a method that comprises providing a system comprising a sample processing component and a data analysis component. The method performs the steps of acquiring intensity information,

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forming a plurality of data sets, grouping the plurality of data sets into clusters, defining bounds for each of the clusters, generating a likelihood model, applying the likelihood model, and outputting the data to at least one of a user and a display component. Furthermore, the data analysis component performs at least one step of the following steps of forming, grouping, defining, generating, and applying.

As pointed out by the Court of Appeals for the Federal Circuit in *Bilski*, a claimed process is patent-eligible under 35 U.S.C. § 101 if (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. Claim 1 provides a method that is tied to a particular machine or apparatus, more specifically, a method tied to a system comprising a data analysis component and a sample processing component. Accordingly, the rejection of claim 1 is deemed to be overcome. Each of claims 2-15, 17, 19-21, 84, and 85 depends from claim 1, and the rejection of claims 2-15, 17, 19-21, 84, and 85 is deemed to be overcome for at least the same reasons that the rejection of claim 1 is deemed to be overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of the Claims under 35 U.S.C. § 103(a)

At page 3 of the Office Action, claims 1, 5-8, 10-12, 19-21, and 84-85 are rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Koehler et al. (U.S. Patent Application Publication No. US 2004/0018506 A1) in view of Liu et al. (U.S. Patent No. 6,920,398 B2). For the reasons set forth herein, Applicants respectfully traverse this rejection.

Under 35 U.S.C. § 103(c)(1), U.S. Patent Application No. US 2004/0018506 A1 to Koehler et al. shall not preclude patentability under 35 U.S.C. § 103 because Koehler et al. qualifies as prior art only under section (e) of 35 U.S.C. § 102. Koehler et al. was owned by the same person or

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subject to an obligation of assignment to the same person, as the claimed invention, at the time the claimed invention was made. Accordingly, this rejection is deemed to be moot. Reconsideration and withdrawal of the rejection are respectfully requested.

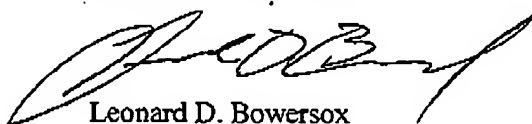
CONCLUSION

In view of the foregoing remarks, Applicants respectfully request favorable reconsideration of the present application and a timely allowance of the pending claims.

Should the Examiner deem that any further action by Applicants or Applicants' undersigned representative is desirable and/or necessary, the Examiner is invited to telephone the undersigned at the number set forth below.

If there are any other fees due in connection with the filing of this response, please charge the fees to deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,



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